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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,276	11/08/2001	Sara J. Trenhaile	5605USA	2725

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GENERAL MILLS, INC.  
P.O. BOX 1113  
MINNEAPOLIS, MN 55440

EXAMINER
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BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/008,276

**Applicant(s)**

TRENHAILE ET AL.

**Examiner**

Igor Borissov

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                       |                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

Amendment received on 9/20/2004 is acknowledged and entered. Claims 1-11 have been canceled. Claim 12 have been amended. Claims 22-32 are currently pending in the application.

### ***Claim Objections***

Claims 13, 15-21 and 22-32 are objected to because of the following informalities:

Claim 13. The claim is confusing because it refers to claim 11, which is canceled.

Claims 15-21 are objected to as being dependent on claim 13.

Claim 22. The phrase "a) providing ... , wherein the recipe *is has* associated..." is confusing. The remaining claims are rejected as being dependent on claim 22.

Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 15-16 and 19-20 are rejected under 35 U.S.C. 112**, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 15-16 and 19-20 recite the limitation "*said blend processor*". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 22-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is not within the technological arts.**

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

*The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. In re Toma at 857.*

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these

analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

The claims of the present application are distinguished from the claims analyzed in the decisions of *State Street*, *Alappat*, *Arrhythmia* and *AT&T*, where the claims in these cases clearly involved the use of technology as shown below.

**State Street:** The claims were in means plus function form and directed to a data processing system for managing a financial services configuration of a portfolio established as a partnership; the claims included limitations of a computer processor means for processing data, a storage means for storing data on a storage medium along with first through fifth means for processing different types of financial data. As such, the claims analyzed in *State Street* clearly involved the technological arts and, therefore, whether or not the claimed invention involved the technological arts was not an issue.

**AT&T Corp:** The claims were directed to a method for use in a telecommunications system in which interexchange calls initiated by each subscriber are automatically routed over the facilities of a particular one of a plurality of interexchange carriers associated with that subscriber comprising generating a message record for an interexchange call between an originating subscriber and a terminating subscriber, and including, in said message record, a primary interexchange carrier (PIC) indicator having a value which is a function of whether or not the interexchange carrier associated with said terminating subscriber is a predetermined

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one of said interexchange carriers. In considering these claims, it is clear that technology is being used to “automatically route” calls over the facilities of interexchange carriers and generating a message record for the call. Furthermore, the courts, in analyzing these claims, clearly indicated that they recognized the claims require the use of switches and computers. See *AT&T Corp. v. Excel Communications Inc.*, 50 USPQ2d at 1450 (Fed. Cir. 1999). The court further noted that AT&T’s claimed process employs subscriber’s and call recipients’ PICs as data, applies Boolean algebra to those data to determine the value of the PIC indicator, and applies that value through *switching and recording mechanisms* to create a signal useful for billing purposes. See *AT&T Corp. v. Excel Communications Inc.*, 50 USPQ2d at 1453 (Fed. Cir. 1999). As such, the claims analyzed in AT&T clearly involved the technological arts as recognized by the court and, therefore, whether or not the claimed invention involved the technological arts was not an issue.

**Alappat:** The claims were directed to a rasterizer for converting vector list data representing sample magnitudes of an input waveform into anti-aliased pixel illumination intensity data to be displayed on a display means comprising various means for determining distances and means for outputting illumination intensity data. Alappat’s invention related generally to a means for creating a smooth waveform display in a digital oscilloscope and as indicated by the court, Alappat’s invention is an improvement in an oscilloscope comparable to a TV having a clearer picture. The court reasoned that invention was statutory because the claimed invention was directed to a “machine”. See *In re Alappat*, 31 USPQ2d at 1552-54 (Fed. Cir. 1994). Furthermore, in the decision of *AT&T Corp.*, the courts recognized that the claims in Alappat were for a machine that achieved certain results. See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 50 USPQ2d at 1452 (CAFC 1999). Once again, these claims clearly involve the technological arts as recognized by the court and, therefore, whether or not the claimed invention involved the technological arts was not an issue.

**Arrhythmia:** The claims were directed to a method for analyzing electrocardiograph signals to determine the presence or absence of a predetermined level of high frequency energy in the late QRS signal including the step of converting a

series of QRS signals to time segments, each segment having a digital value equivalent to the analog value of said signals at said time. In considering these claims, it is clear that technology is being used to convert a series of QRS signals to time segments having a digital value. Once again, these claims clearly involve the technological arts since one could not convert a signal to a time segment having a digital value without the aid of a computer or some processing device and, therefore, whether or not the claimed invention involved the technological arts was not an issue.

Contrary to the claims in the above-cited cases, in the present application, claims 22-32 are completely silent with regard to technology and is purely an abstract idea or process steps that are employed completely without the use of any technology whatsoever. The claims are no more than a suggested idea of optimizing ingredient selection for a recipe based on the predetermined functional and nutritional parameters. As per the method step: *providing a supply of ingredients*; it may be understood as merely having an agreement with a supplier of said ingredients to provide certain amount of said ingredients at the certain time. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)). Although *Bowman* is not precedential, it has been cited for its analysis.

Furthermore, in accordance with MPEP 2106 (IV)(B)(2)(b) "Statutory Process Claims", not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-184, 209 USPQ at 6 (quoting *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1877)). The claims in the present application do not appear to satisfy either of the two conditions listed above. First, the claims do not include limitations that would suggest a computer is being used to transform the data from one form to another that would place the invention in the technological arts. Second, disregarding the fact that there is no computer claimed that



would physically transform the data, there does not appear to be any physical transformation of data. The claims merely determine ingredients for a recipe based on several functional and nutritional parameters, however, said parameters appear to be an arbitrary abstract thing and not a discrete value resulting from a calculation of these parameters by a computer or processor. Thus, there neither appears to be any physical transformation of data from one form to another, which is based upon an algorithm or a calculation by a computer or processor, nor is there any technology claimed that would be used to transform the data.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) a network system, or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Furthermore, the preamble comprises a general description of all the elements or steps which are conventional or known (MPEP 608.01 (i) (e).), and therefore, does not constitute an invention.

As to "wherein" clause, it merely states the intended use of the invention, or the result of the limitations in the claim, and adds nothing to the patentability of the claim. Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (US 5,105,767) (Gordon) in view of Larsen (4,786,182) and further in view of Sibley, Jr. (US 4,677,552) (Sibley).**

Claims 12 and 14. Gordon teaches a computerised monitoring system and method for animal feed ration processing mills, comprising: formulating a blend output to form most cost efficient blended product (C. 1, L. 5-9 ; C. 1, L. 62-67), wherein said formulating includes monitoring data related to ingredients of the actual blend and comparing said data with recommended by an agricultural research facility (model data) (C. 2, L. 63 – C. 3, L. 3) to provide online analysis of a rations being processed (C. 2, L. 65-66).

Gordon does not specifically teach that said *comparing* step includes comparing *an actual blend cost* and *a model blend cost*, wherein said cost-related data is time-sensitive data and related to the current market cost of at least one ingredient.

Haeffner teaches a method and system for production of animal feed, comprising: calculating cost characteristics of ingredients used in formulating animal feed output; comparing the cost of actual blend to the cost of existing (model) feedstuff; and selecting said ingredients based on said comparing to achieve an end product (C. 3, L. 5-6; C. 5, L. 50-54).

Sibley teaches a method and system for international commodity trade exchange, said commodity including wheat, wherein wheat prices are monitored in real time (Fig. 6, C. 11, L. 1-12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gordon to include comparing *an actual blend cost* and a *model blend cost*, as disclosed in Haeffner, because it would advantageously allow to keep cost of production in control, thereby increase profits. And it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gordon and Haeffner to include that said ingredients data is time-sensitive market data, as disclosed in Sibley, because it would advantageously allow to maximize profit by adjusting product recipe to include the best priced ingredients at the moment.

Claims 13 and 15. Gordon teaches that said ingrediants include grain (C. 10, L. 8).

Claim 16. Gordon teaches providing an interactive online analysis, thereby obviously indicating an interactive user input/output (C. 2, L. 65).

Claim 17. Gordon teaches providing said blend output, said output including percent protein informaiton and grain moisture information (C. 2, L. 39). Haeffner teaches providing ton (bushel) related information (C. 5, L. 47 ; C. 11, L. 41). The motivation to combine Gordon and Haeffner would be to maintain quality control over the output product.

Claim 18. Haeffner teaches said method, wherein the output includes information related to a diifference between actual blend cost and existing (model) blend cost (C. 5, L. 50-67).

Claim 19. Gordon teaches tracking sid ingredions usage, and computing analysis statistics for ingredions being processed (C. 2, L. 34-40).

Claim 20. Printing from a computer is old and well known. Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Gordon, Haeffner and Sibley to include printing the result of output calculation, because it would advantageously provide users with hard copy of the results.

Claim 21. Gordon teaches celecting a variety of grains (C. 10, L. 8). Sibley teaches said method for commodity, including wheat, wherein wheat prices are monitored in real time (Fig. 6, C. 11, L. 1-12). The motivation to combine Gordon and

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Haeffner with Sibley to include wheat would be to increase revenue by offering a blend output including an important and widely used nutritional product.

**Claims 22-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Larsen (US 4,786,182).**

Claims 22. Gordon teaches a computerised monitoring system and method for animal feed ration processing mills, comprising: providing a predetermined ration formula for a food product including ingredients having predetermined physical and nutritional parameters (C. 2, L. 63 – C. 3, L. 3); providing a supply of ingredients (C. 4, L. 43-45); calculating at least one of said parameters for said ingredients (C. 2, L. 62-66); optimizing ingredient selection based on said physical and nutritional parameters; and providing said blend mix output (C. 3, L. 20-22).

Gordon does not specifically teach that said predetermined ration formula includes a recipe.

Larsen teaches a computerised method and system for controlling a fodder mixing, wherein pellets are produced in accordance with a recipe, and wherein physical, nutritional and cost parameters of ingredients are constantly monitored in order to optimize said recipe and optimum pellet quality (C. 1, L. 49-60).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gordon to include that said predetermined ration formula includes a recipe, as disclosed in Larsen, because it would advantageously allow to increase the variety of products being output by said system, thereby increase profits.

Claim 23. Larsen teaches said method, wherein said at least one of calculated parameters is cost (C. 1, L. 60).

Claim 24. Gordon teaches said method, wherein said at least one of calculated parameters is nutritional properties (C. 2, L. 60).

Claims 25 and 28. Larsen teaches said method, wherein said at least one of calculated parameters is physical quality (functional properties) (C. 1, L. 37).

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Claim 26. Larsen teaches said method, wherein the nutritional property is protein content (C. 3, L. 54).

Claim 27. Gordon teaches said method, wherein said at least one of calculated parameters is nutritional properties (C. 2, L. 60). Information as to the specific content of the nutritional property (*fiber content*) is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed. The method steps, disclosed in Gordon and Larsen would be performed the same regardless of the specific content of the nutritional property.

Claim 29. Gordon teaches said method, wherein said physical property is moisture content (C. 2, L. 61).

Claim 30. Gordon teaches said method, wherein said physical property is weight (C. 2, L. 58; C. 11, L. 41).

Claim 31. Gordon teaches said method, wherein feed grains are processed by crushing the grains between opposing rollers to produce finely ground rations (C. 1, L. 17-18), thereby obviously indicating production of flour.

Claim 32. Gordon teaches said method, wherein said ingredient is a grain (C. 10, L. 8).

### ***Response to Arguments***

Applicant's arguments filed 9/20/04 have been fully considered but they are not persuasive.

In response to applicant's argument that claim rejection under 35 USC 101 should be withdrawn, because the independently claimed method is applied to a technical art, i.e. a method of selecting ingredients from a supply and generating a blend mix output, the examiner stipulates that claims 22-32 are silent with regard to technology and is purely an abstract idea or process steps that are employed completely without the use of any technology. The claims are no more than a suggested idea of optimizing ingredient selection for a recipe based on the predetermined functional and nutritional parameters. As per the method step: *providing a supply of ingredients*; it may be understood as merely having an agreement with a supplier of said ingredients to provide certain amount of said ingredients at the certain time. As per the method step: *providing a blend mix output that specifies the amount of each ingredient*; it may be understood as merely providing verbal or written recommendation regarding said ingredients. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. App. & Inter. 2001)). Although *Bowman* is not precedential, it has been cited for its analysis.

Furthermore, in accordance with MPEP 2106 (IV)(B)(2)(b) "Statutory Process Claims", not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-184, 209 USPQ at 6 (*quoting* *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1877)). The claims in the present application do not appear to satisfy either of the two conditions listed above. There neither appears to be any physical transformation of data from one form to another,

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which is based upon an algorithm or a calculation by a computer or processor, nor is there any technology claimed that would be used to transform the data. Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

In response to applicant's argument that the prior art does not teach *a blend mix output*, wherein ingredients include *grain*, it is noted that Gordon specifically teaches a method and apparatus for preparing precisely tailored feed rations from various ingredients, wherein said ingredients include grains (C. 1, L. 17; C. 10, L. 8).

In response to applicant's argument that the prior art does not teach *providing ingredients selection for preparing a blend mix output, and optimizing ingredient selection based on evaluated parameters of the ingredients*, the examiner stipulates that Gordon teaches: providing an ingredient supply (C. 4, L. 43-45); analysing ingredient flow data, including physical and nutritional properties of the ingredients (C. 2, L. 62-66); and optimizing ingredient selection based on said physical and nutritional parameters (C. 3, L. 20-22).

### **Conclusion**

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**(703) 872-9306** [Official communications; including After Final  
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.



JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

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12/05/2004